

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10571 OF 2015

SHAIKH RAHIM SHAIKH NAEEM
VERSUS
THE HEALTH OFFICER AND ANOTHER

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Advocate for the Petitioner : Shri Golewar V.P.
Advocate for Respondent 1 : Shri A.V. Lavte h/f Shri S.J. Salunke
AGP for Respondent 2 : Ms.V.S. Choudhary

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2022

Per Court:

1. The petitioner is aggrieved by the judgment and order dated 13.03.2015 delivered by the Industrial Court in Revision (ULP) Nos.38/2014 and 47/2014, vide which, the judgment of the Labour Court dated 09.04.2013 allowing Complaint (ULP) No.2/2013, has been quashed and set aside.

2. I have considered the strenuous submissions of the learned advocate for the petitioner and the learned advocate on behalf of the respondents.

3. The National Rural Health Scheme was being implemented through the District Civil Surgeons in the State of Maharashtra. The scheme was being operated by the respective Zilla Parishads of the region.

Under the scheme, the District Civil Surgeon used to depute certain doctors to visit certain schools in rural areas and carry out medical examination of students in the said schools. An Ambulance vehicle was being used to carry the medical and paramedical staff to such villages for reaching schools to conduct the medical check-up of students. Since this was a scheme that depended on the funds made available by the Central Government under the National Rural Health Mission (NRHM) and it was not part of a permanent scheme of the Zilla Parishad, the drivers on such vehicles were to be appointed on contract basis. One such document cited is dated 31.07.2010, which is the letter addressed to the Medical Superintendents of various talukas by the District Civil Surgeon of Jalna. Such Taluka Medical Superintendent was directed to engage a driver on contractual basis. Tenders were to be invited for seeking quotations of charges for deployment of such drivers and as, at the relevant time, the tender process had not been resorted to, an adhoc arrangement for appointing drivers on contractual basis was undertaken.

4. The Medical Officer of the Rural Hospital, Jafrabad, District Jalna, addressed the Health Centre directing it to engage the petitioner on contractual basis for the ambulance, vide letter dated 01.10.2010, copy of which is supplied to the petitioner. It was in these circumstances that the petitioner came to be engaged from November, 2008 and he worked till 31.12.2012. He was disengaged on 01.01.2013.

5. The learned advocate for the petitioner submits, on instructions, that there was no advertisement published. No tenders were called. He was approached by the Health Department of Jafrabad Taluka. He was called upon to drive the ambulance under the said scheme. As he was disengaged from 01.01.2013, he preferred the ULP complaint.

6. The respondents entered their Written Statement and have specifically contended that the Lokseva Sushikshit Berojgar Seva Sanstha, Aurangabad (hereinafter referred to as “the Lokseva Society”) should have been arrayed as the respondent since the petitioner was issued with an appointment order by the said Lokseva Society. It was denied that any of the respondents had appointed the petitioner. Both the respondents have taken an identical stand that the petitioner is not their employee. The said Lokseva Society had appointed the petitioner on contractual basis and the complaint deserves to be dismissed for non-joinder and mis-joinder of parties.

7. It was further stated in the Written Statement that the post of driver of the ambulance was not created by the Zilla Parishad or the State Government. When the tenders were invited for selecting a contractor in pursuant to the Government Resolution dated 16.01.2003, the said Lokseva Society was selected and there were 30 drivers appointed by the said contractor on contractual basis. Twelve drivers were appointed in the Primary Health Centres, 08 were appointed for taluka Medical Officers

and 10 were appointed for NRHM.

8. The learned advocate for the petitioner points out from the cross examination of the respondents' witness that the petitioner has completed 240 days in each year. His name is entered on the attendance register. However, it was denied that the petitioner was illegally removed.

9. The learned Labour Court had allowed Complaint (ULP) No.2/2013 vide the judgment dated 09.04.2014. By placing reliance upon ***Secretary, State of Karnataka v/s Umadevi, 2006 (4) SCC 1 : AIR 2006 SC 1806***, it was held that the said judgment enables regularization of the appointment of the petitioner. Based on such finding, the Labour Court allowed the complaint.

10. In my view, since the medical health check up of students studying in schools in rural areas was undertaken by the Zilla Parishad under the NRHM and as the contractor had appointed the petitioner, the ULP complaint itself would have been untenable in the light of the law laid down by the Honourable Supreme Court in ***Vividh Kamgar Sabha vs Kalyani Steels Ltd., 2001(1) CLR 532*** and ***Cipla Limited v/s Maharashtra General Kamgar Union, 2001(1) CLR 754***.

11. The Industrial Court, in my view, has rightly considered that the Child Health Screening and Early Intervention Service under the NRHM was under operation since 2005 to 2015. The guidelines issued by the NRHM were followed and Tenders for offering services of drivers used

to be floated. By calling bids, the drivers were used to be engaged. Insofar as the petitioner is concerned, the said Lokseva Society was the contractor, whose bid was accepted and the petitioner was appointed alongwith 29 others.

12. In view of the above, I do not find that the Industrial Court has committed any error in allowing the revision petitions and dismissing the ULP complaint. Actually, in view of the law laid down in *Kalyani Steel (supra)* and *Cipla Limited (supra)*, the complaint ULP should have been dismissed as being untenable.

13. In view of the above, this Writ Petition being devoid of merit is, therefore, dismissed.

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(RAVINDRA V. GHUGE, J.)